

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

RYAN NOECKER, on behalf of §
himself and all others similarly situated, §
§
Plaintiff, §
§ Case Number 5:10-cv-81-H LH
vs. §
§
TOPAZ FINANCIAL SERVICES, INC., §
SWIFT ROCK FINANCIAL, INC., §
MESA ROCK FINANCIAL, LLC, §
DORCAS HOLDEN & §
DERIN SCOTT a/k/a DEROM SCOTT, §
§
Defendants. §

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE &
JOINT MOTION FOR APPROVAL OF SETTLEMENT

The Plaintiff, Ryan Noecker, on behalf of himself and the individuals listed in Attachment A (collectively “the Plaintiffs”), and the Defendants, Topaz Financial Services, Inc., Swift Rock Financial, Inc., Mesa Rock Financial, LLC, Dorcas Holden and Derin Scott, jointly move the Honorable Court to dismiss the case with prejudice and approve their settlement. In support of the stipulation and motion, the parties state as follows:

1. This is an action filed under the Fair Labor Standards Act (FLSA), in which Plaintiffs sought recovery for overtime allegedly due and owing to them. Defendants denied the Plaintiffs’ allegations and disputed their entitlement to the requested overtime challenging the validity of their claims.
2. A verified complaint was filed on February 1, 2010. (Doc 1). The Honorable Court granted the Parties’ joint motion for conditional class certification on August 4,

2010. (Doc 11). The Parties mediated the case on December 14, 2010, and were unable to reach a settlement. Opt-ins consented to join from both Topaz Financial, Inc. and Swift Rock Financial, Inc. A number of the opt-ins failed to respond to discovery, and accordingly withdrew their consents. (Doc 29 & 34).

3. While the Parties were litigating the claim of the individuals who had opted into the *Noecker* case, the Defendants were investigated by the Department of Labor Wage & Hour Division. The DOL settled on behalf of non-class members using a half-time calculation. The half-time rate used was \$4.50 per hour, as the regular rate of pay utilized was \$9.00 per hour. The DOL determined that the employees had been paid straight time, and rejected the notion of off-the-clock work. The settlement with the DOL is attached as Attachment B.

4. In the case at hand, the Parties have reached a resolution of this matter and have agreed to settlement terms, the key provisions of which are as follows: (i) payment of overtime for over 3.2 hours week at time and half calculation of \$13.50 per hour *See Attachment A*; (ii) payment of attorneys' fees and costs in the amount of \$30,000 by Defendants as not to affect the Plaintiffs. Because of the nature of the claims, the Parties seek Court approval. *See Lynn's Food Stores, Inc. v. U.S.*, 679 F.2d 1350, 1352 (11th Cir. 1982).

5. In order to avoid the uncertainties of litigation and the attorneys' fees associated with this type of action, the Parties negotiated a settlement and seek dismissal of the case with prejudice. Importantly, throughout the entirety of the resolution process, the Plaintiffs were represented by competent counsel with experience in this area of law. The Defendants also were represented by experienced counsel throughout the process.

6. The Parties jointly request that the Court enter an Order approving the settlement and dismissing the case with prejudice.

Respectfully submitted this 3rd day of February 2012,

/s/ Bernard R. Mazaheri

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